

LAW OFFICE OF
DAVID J. WEINSOFF
138 Ridgeway Avenue
Fairfax, California 94930
tel. 415-460-9760
david@weinsofflaw.com

AUG 29 2019

Via Certified Mailing – Return Receipt

August 27, 2019

Jaxon Keys Winery & Distillery
A member of Wilson Artisan Wineries
Attn: Managing Agent
10400 South Highway 101
Hopland, CA 95449-9650

Mr. Kenneth Wilson
Ms. Diane Nolan
P.O. Box 487
Geyserville, CA 95441

**Re: Notice of Violations and Intent to File Suit Under the Federal Water
Pollution Control Act (Clean Water Act)**

Dear Mr. Wilson, Ms. Nolan and Managing Agent:

INTRODUCTION

A comprehensive review of documents provided by the Jaxon Keys Winery & Distillery on the State Water Resources Control Board's SMARTS stormwater database, and documents provided to our client California River Watch ("River Watch") by the North Coast Regional Water Quality Control Board in response to a formal Public Records Act request, suggest that Jaxon Keys Winery & Distillery does not qualify for its "No Exposure Certification" under the California General Permit for Storm Water Discharges Associated with Industrial Activities.

To clarify this matter, River Watch by letter of May 9, 2019 (*see* Exhibit A), informed Jaxon Keys Winery & Distillery that it "is concerned about discharges of stormwater from [the] property"; that on-line information from the State and Regional boards "identified a retention pond, parking lot(s), outdoor storage areas, and the winery's close proximity to the Russian River – all factors which suggest that industrial stormwater from the property may not be wholly retained on-site"; and that to "address this concern and ensure compliance with the General Permit ... River Watch would like to visit the winery at [the convenience of the owner/operator] to meet and discuss this matter." River Watch's letter concluded that it "is very mindful that receipt of a letter such as this can be disturbing, it is the goal of the organization to ensure compliance with our environmental laws and requirements are met with the least disruption of the winery's operations."

River Watch received no response to its letter posted via Certified Mailing, or following personal delivery of the letter to Jaxon Keys Winery & Distillery on June 11, 2019. In the absence of a reply that would lead to resolution of this matter without recourse to the citizen enforcement provisions of the federal Clean Water Act, River Watch provides notice to Jaxon Keys Winery & Distillery as follows.

NOTICE OF ALLEGED VIOLATIONS

This Notice is provided on behalf of River Watch in regard to violations of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1251 *et seq.*, that River Watch alleges are occurring at the winery known as Jaxon Keys Winery & Distillery (“Winery”) located at 10400 South Highway 101 in Hopland, California, owned and/or operated by Wilson Artisan Wineries, Kenneth Wilson, and Diane Nolan. Notice is being sent to you as the responsible owners, operators, and managers of the Winery and the associated industrial operations taking place on the Winery property.

CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States unless such discharge is in compliance with various enumerated sections of the Act. Among other things, CWA § 301(a) prohibits discharges not authorized by, or in violation of, the terms of an individual National Pollutant Discharge Elimination System (“NPDES”) permit or a general NPDES permit issued pursuant to CWA § 402, 33 U.S.C. § 1342.

CWA § 402(p), 33 U.S.C. § 1342 establishes a framework for regulating stormwater and non-stormwater discharges from industrial facilities such as the Winery under the NPDES program. States with approved NPDES permitting programs are authorized under this section to regulate storm water discharges through individual permits issued to owners and/or operators of an industrial site and/or through the issuance of a single, statewide general permit applicable to all storm water dischargers. Pursuant to CWA § 402, the Administrator of the U.S. Environmental Protection Agency (“EPA”) has authorized California’s State Water Resources Control Board (“SWRCB”) to issue NPDES permits including general NPDES permits in California.

The SWRCB elected to issue a statewide general permit for industrial stormwater dischargers and issued NPDES Permit No. CAS000001, SWRCB Order No. 92-12-DWQ (the “General Permit”) on or about November 19, 1991, modified it on or about September 17, 1992, reissued it on or about April 17, 1997, and amended it significantly on April 1, 2014 (effective July 1, 2015), pursuant to CWA § 402(p). In order to discharge stormwater lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained an individual NPDES permit and ensure compliance with its terms.

CWA § 505(b) requires a citizen to give notice of the intent to file suit sixty (60) days prior to the initiation of a civil action under CWA § 505(a). Notice must be given to the alleged violator, the EPA, and the state in which the violations occur. As required by the CWA, this Notice provides notice of the violations that have occurred and continue to occur at the Winery. Consequently, Wilson Artisan Wineries, Kenneth Wilson, and Diane Nolan (collectively “Wilson”) is placed on formal notice by River Watch that after the expiration of sixty (60) days

from the date of this Notice, River Watch will be entitled to bring suit in the United States District Court against Wilson for continuing violations of an effluent standard or limitation, as well as the failure to comply with requirements set forth in the California Code of Federal Regulations and the North Coast Regional Water Quality Control Board (“RWQCB”) Water Quality Control Plan or “Basin Plan.”

The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

1. The Specific Standard, Limitation, or Order Alleged to Have Been Violated.

Any industrial facility discharging industrial-related stormwater or non-stormwater from its site must obtain coverage under an NPDES permit. River Watch notices Wilson of ongoing violations of CWA § 402: (a) through its failure to apply for, obtain, and comply with the terms and conditions of an individual NPDES permit; or (2) through its failure to submit a Notice of Intent (“NOI”) seeking coverage under the General Permit. Either permit would address the discharges of stormwater and non-stormwater relating to industrial services and operations taking place at the Winery.

River Watch, following its investigation and consultation with experts, contends that Wilson has failed to conduct its industrial operations at the Winery with coverage under and in compliance with any of the requirements under the CWA including, but not limited to, eliminating the threat of pollution from those industrial operations.

Only dischargers that meet the requirements of the “No Exposure Certification” (“NEC”) Conditional Exclusion set forth in Section XVII of the General Permit are exempt from the Storm Water Pollution Prevention Plan (“SWPPP”) requirements, sampling requirements, and visual requirements of the General Permit. It is River Watch’s contention that the Winery does not meet the requirements of the NEC. Specifically, there are conflicting facts on the February 9, 2016 NEC form signed by winemaker Antoine Favero (*see* Exhibit B), and information on maps/diagrams available on SMARTS provided by the Winery. The NEC form “Checklist” includes check-marks stating that “Outdoor Storage Not Exposed;” Private Roads ... Not Exposed;” and “Processed Wastewater Not Exposed.” But the “Monitoring Diagram,” “Potential Pollutants Diagram,” “Facility Diagram,” and “Vicinity Diagram” (*see* Exhibit C) for the Winery reveal an outdoor storage, a retention pond with “Underground Conveyance Flow” from the Winery, and exposed private roads on-site (to provide access for the industrial operations, as well as the on-site beverage tasting facility, group tours, and overnight accommodations). Of principal concern to River Watch is that all of this industrial activity takes place in close proximity to Crawford Creek, a tributary to the nearby Russian River and a water of the United States.

Note that in the event Wilson has improperly certified and obtained an NEC for the Winery, it may be in violation of the federal False Claims Act. If during the course of this case River Watch determines that Wilson violated the False Claims Act, a separate notice of violations under the False Claims Act consistent with the requirements of that statute will be served.

2. The Activity Alleged to Constitute a Violation.

Full compliance with the mandates of the permitting requirements under the CWA is not a mere statutory and regulatory exercise. The lands in and surrounding the Winery produce a harvest of unparalleled bounty drawing acclaim worldwide. Failing to care for this critical environment as alleged in this Notice is a violation not only of law, but an abrogation of the trust we demand of Mendocino County landowners. Wilson appears to support this, as it proclaims on the Winery's website – "Because we understand that superior fruit comes from healthy soils and balanced vines, we do the little things right. Our sustainable viticultural practices include composting, avoiding organophosphates, conservative pruning, block-specific trellising and canopy management, and post-veraison crop thinning." (<http://jaxonkeyswinery.com/vineyards>).

A review of publicly available information and eyewitness reports reveal that industrial operations at the Winery are conducted both indoors and outdoors where they are subject to rain events. Because there is no compliance by Wilson with standard CWA permit requirements, there is no stormwater sampling, monitoring, or implementation of Best Management Practices that would control the discharge of pollutants and ensure there is no unlawful discharge of pollutants from the Winery. This concern for effective storm or process water pollution control extends to the following:

- The Winery property contains an industrial pond which may discharge to Crawford Creek. River Watch has failed to find any evidence demonstrating this pond is sufficiently sized or constructed to prevent overflows or subsurface releases.
- "Erosion and Sediment Controls" must be in place at the Winery to ensure roadways used for the trucking of supplies to, from, and within the Winery, as well as traffic to and from the Tasting Room, are constructed and maintained to properly control stormwater discharges.
- Wilson must conduct a comprehensive potential pollutant analysis, including an analysis of transportation-related services to and from the Winery.

Note that in addition to the pollution controls imposed under CWA permitting, the RWQCB has established water quality standards applicable to facilities such as the Winery. The RWQCB's Basin Plan includes both numeric and narrative standards.

3. The Person or Persons Responsible for the Alleged Violation.

The entities responsible for the alleged violations are Wilson Artisan Wineries, Kenneth Wilson, and Diane Nolan, as owners and operators of Jaxon Keys Winery & Distillery.

4. The Location of the Alleged Violation.

The location of the various violations is the permanent address of the Winery at 10400 South Highway 101 in Hopland, California, including the waters of Crawford Creek and the Russian River.

5. The Date or Dates of Violation or a Reasonable Range of Dates During Which the Alleged Activity Occurred.

The range of dates covered by this Notice is from August 1, 2015 to August 1, 2019. This Notice includes all violations which occur after the range of dates covered by this Notice. Some of the violations are continuous in nature, therefore each day constitutes a violation.

6. The Full Name, Address, and Telephone Number of the Person Giving Notice.

The entity giving this Notice is California River Watch, an Internal Revenue Code § 501(c)(3) nonprofit, public benefit corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California. River Watch's mailing address is 290 South Main Street, #817, Sebastopol, California 95472. River Watch is dedicated to protecting, enhancing and helping to restore surface water and groundwaters of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and to educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be directed to:

David Weinsoff, Esq.
Law Office of David Weinsoff
138 Ridgeway Avenue
Fairfax, CA 94930
Tel. 415-460-9760
Email: david@weinsofflaw.com .

REMEDIAL MEASURES REQUESTED

River Watch believes that application to the RWQCB for an individual NPDES permit or the filing of an NOI seeking coverage under the General Permit, followed by strict compliance with the terms and conditions imposed, is necessary in order to bring Wilson into compliance with the CWA and reduce the biological impacts from its non-compliance upon public health and the environment surrounding the Winery.

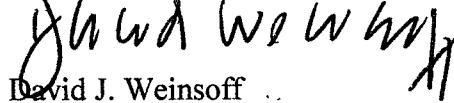
CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community and may use the affected watershed for recreation, sports, fishing, swimming, hiking, photography, nature walks and/or the like. Their health, use, and enjoyment of this natural resource is specifically impaired by Wilson's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$54,833.00 per day/per violation pursuant to CWA § 309(d) and 505, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1-19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch encourages Wilson to contact counsel for River Watch within **20 days** after receipt of this Notice to: (1) initiate a discussion regarding the allegations detailed in this Notice, and (2) set a date for a site visit to the Winery. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating the Winery is in compliance with the strict terms and conditions of the CWA, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,


David J. Weinsoff

DW:lm

Attachments /Exhibits

Service List

Andrew Wheeler, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N. W.
Washington, D.C. 20460

Michael Stoker, Regional Administrator
U.S. Environmental Protection Agency
Pacific Southwest, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Eileen Sobeck, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

EXHIBIT A



290 South Main Street, #817 • Sebastopol, CA 95472 • US@ncriverwatch.org

Via Certified Mail
Return Receipt Requested

May 9, 2019

Jaxon Keys Winery & Distillery
10400 South Highway 101
Hopland, CA 95449

Re: Compliance with State of California General Industrial Permit to Discharge Storm Water

Dear Diane and Ken Wilson,

California River Watch, a Sebastopol-based non-profit environmental organization, reviewed your winery's application and receipt under the State's General Industrial Stormwater Permit of a "No Exposure Certification" (attached) from the State Water Resources Control Board/North Coast Regional Water Quality Control Board and is concerned about discharges of stormwater from your property.

An analysis of on-line information from the Boards identified a retention pond, roadways, parking lot(s), outdoor storage areas, and the winery's close proximity to the Russian River - all factors which suggest that industrial stormwater from the property may not be wholly retained on-site, and as a result can impact the waters of the nearby Russian River. The "No Exposure Certification" approved by the Boards in the section titled "NEC Checklist" states that "Material/Product Loading/Unloading Not Exposed," "Outdoor Storage Not Exposed," "Private Roads ... Not Exposed," and "Process Wastewater Not Exposed." River Watch is concerned that there may be an inconsistency between the information asserted on this form and activities on-site.

To address this concern and ensure compliance with the General Permit issued by the State Water Resources Control Board under the federal Clean Water Act, River Watch would like to visit the winery at your convenience to meet and discuss this matter with you. While River Watch is very mindful that receipt of a letter such as this can be disturbing, it is the goal of the organization to ensure that compliance with our environmental laws and requirements are met with the least disruption to the winery's operations.

Please contact me at your earliest convenience to discuss this matter.

Sincerely,

Larry Hanson
Board President

Attachment

EXHIBIT B



State Water Resources Control Board
NO EXPOSURE CERTIFICATION
GENERAL PERMIT TO DISCHARGE STORM WATER
ASSOCIATED WITH INDUSTRIAL ACTIVITY (WQ ORDER No. 2014-0057-DWQ)
(Excluding Construction Activities)



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

NEC ID:

Status: Submitted to Water Board

Operator Information

Type: Private Business

Name: Jaxon Keys Winery
Address: PO Box 487
Address 2: _____
City/State/Zip: Geyserbille CA 95441
Federal Tax ID: _____

Contact Name: Antoine Favero
Title: winemaker
Phone Number: 707-480-5575
Email Address: antoine@mazzocco.com

Facility Information

Level:

Contact Name: Antoine Favero
Site Name: Jaxon Keys Winery
Address: PO Box 487
City/State/Zip: Hopland CA 95441
County: Mendocino
Latitude: 39.01209 Longitude: -123.13022
Industrial Area Exposed to Storm Water: _____
Percent of Site Impervious (Including Rooftops): _____

Title: winemaker
Site Phone #: 707-480-5575
Email Address: antoine@mazzocco.com
Site Size: 10 Acres
0 Acres
6 %

SIC Code Information

1. 2084 Wines, Brandy, and Brandy Spirits
2. _____
3. _____

NEC Checklist (industrial activity exposure to storm water)

- | | |
|--|--|
| Residuals From Machinery Not Exposed: <input checked="" type="checkbox"/> | Residuals From Spills/Leaks Not Exposed: <input checked="" type="checkbox"/> |
| Materials/Products From Past Activity Not Exposed: <input checked="" type="checkbox"/> | Material Handling Equipment Not Exposed: <input checked="" type="checkbox"/> |
| Material/Product Loading/Unloading Not Exposed: <input checked="" type="checkbox"/> | Outdoor Storage Not Exposed: <input checked="" type="checkbox"/> |
| Open/Deteriorated/Leaking Containers Not Exposed: <input checked="" type="checkbox"/> | Private Roads/Railways Not Exposed: <input checked="" type="checkbox"/> |
| Waste Material Not Exposed: <input checked="" type="checkbox"/> | Processed Wastewater Not Exposed: <input checked="" type="checkbox"/> |
| Residuals From Ventilation Not Evidenced: <input checked="" type="checkbox"/> | |

RWQCB Jurisdiction: Region 1 - North Coast

Phone: 707-576-2220

Email: r1_stormwater@waterboards.ca.gov

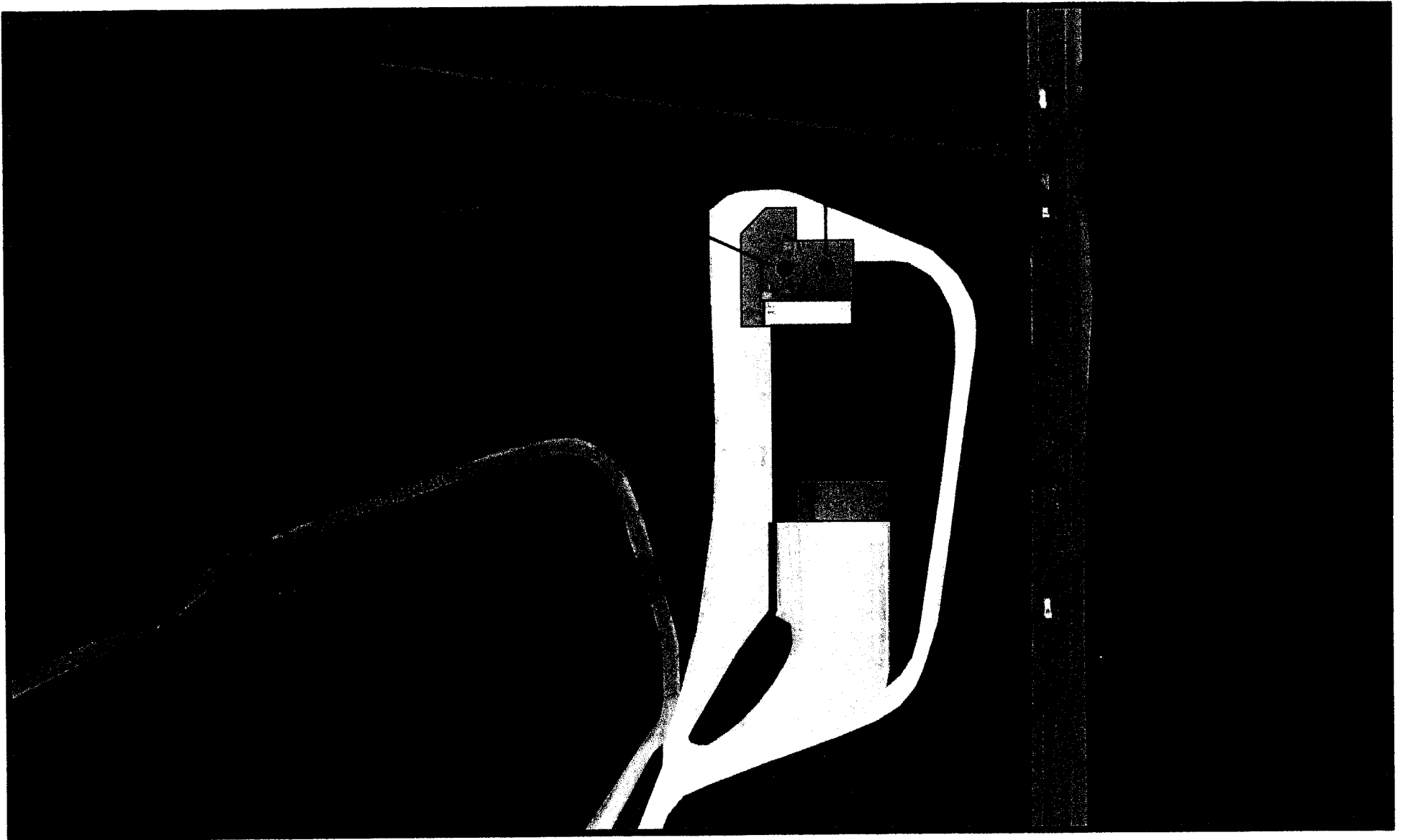
Certification

Name: Antoine Favero
Title: Winemaker

Date: February 09, 2016

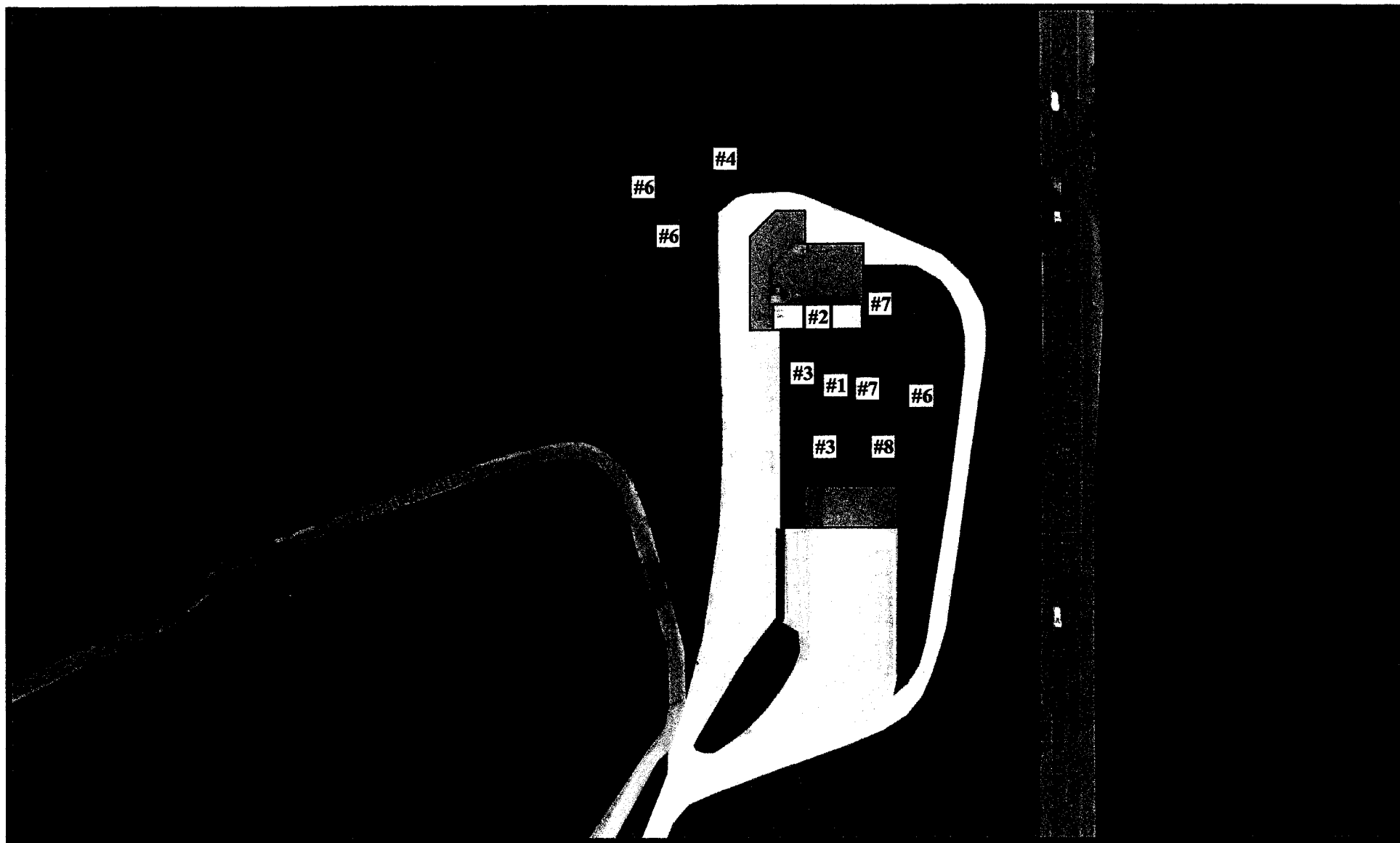
EXHIBIT C

Jaxon Keys Winery - Monitoring Diagram
10400 South Highway 101, Hopland, CA 95449



Jaxon Keys Winery - Potential Pollutants Diagram

10400 South Highway 101, Hopland, CA 95449

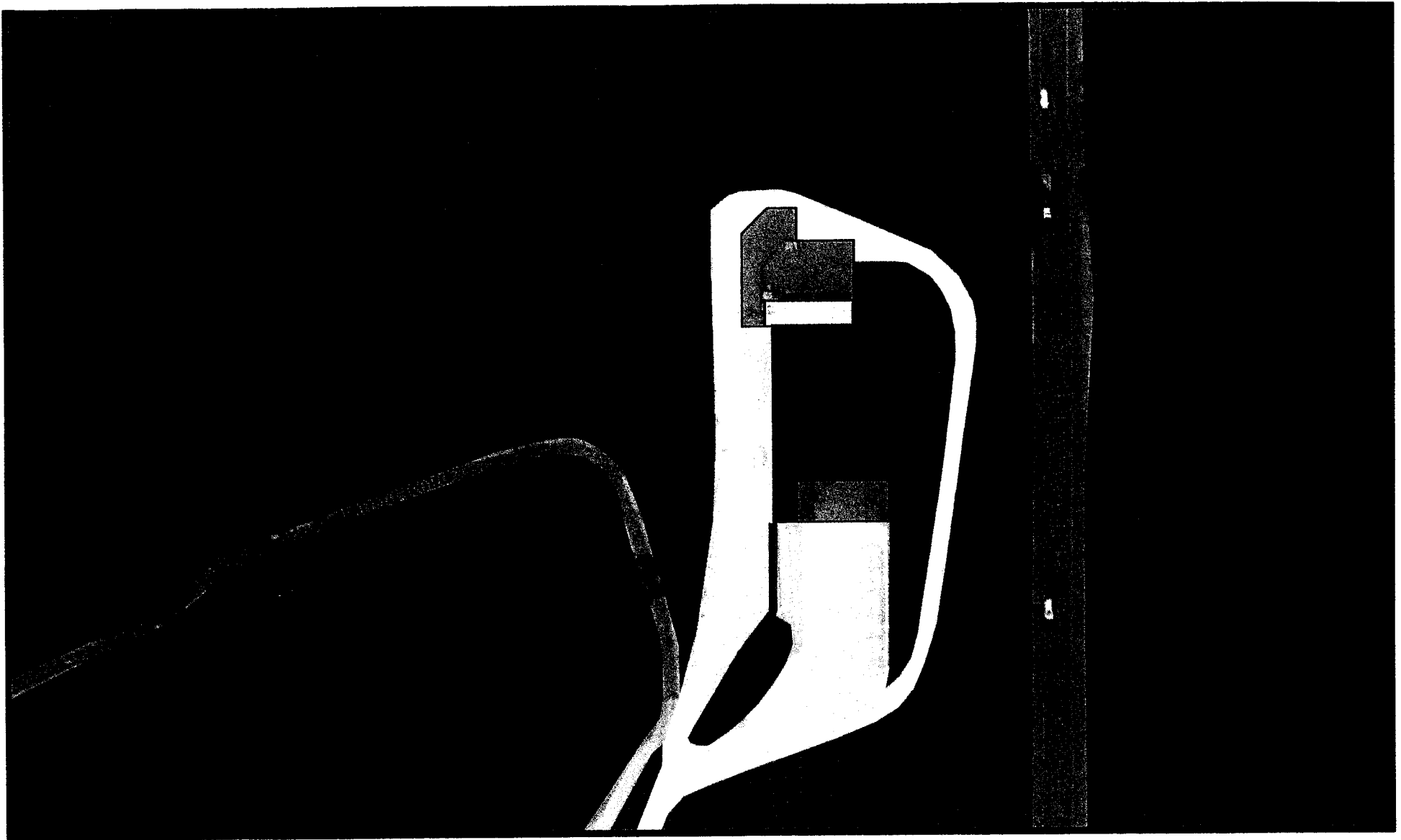





#1: Indoor Production
#2: Grape Press
#3: Indoor Storage
#4: Lidded Dumpsters




#5: Operational Production
#6: Outdoor Storage
#7: Loading/Unloading
#8: Distillery






Jaxon Keys Winery - Facility Diagram
10400 South Highway 101, Hopland, CA 95449



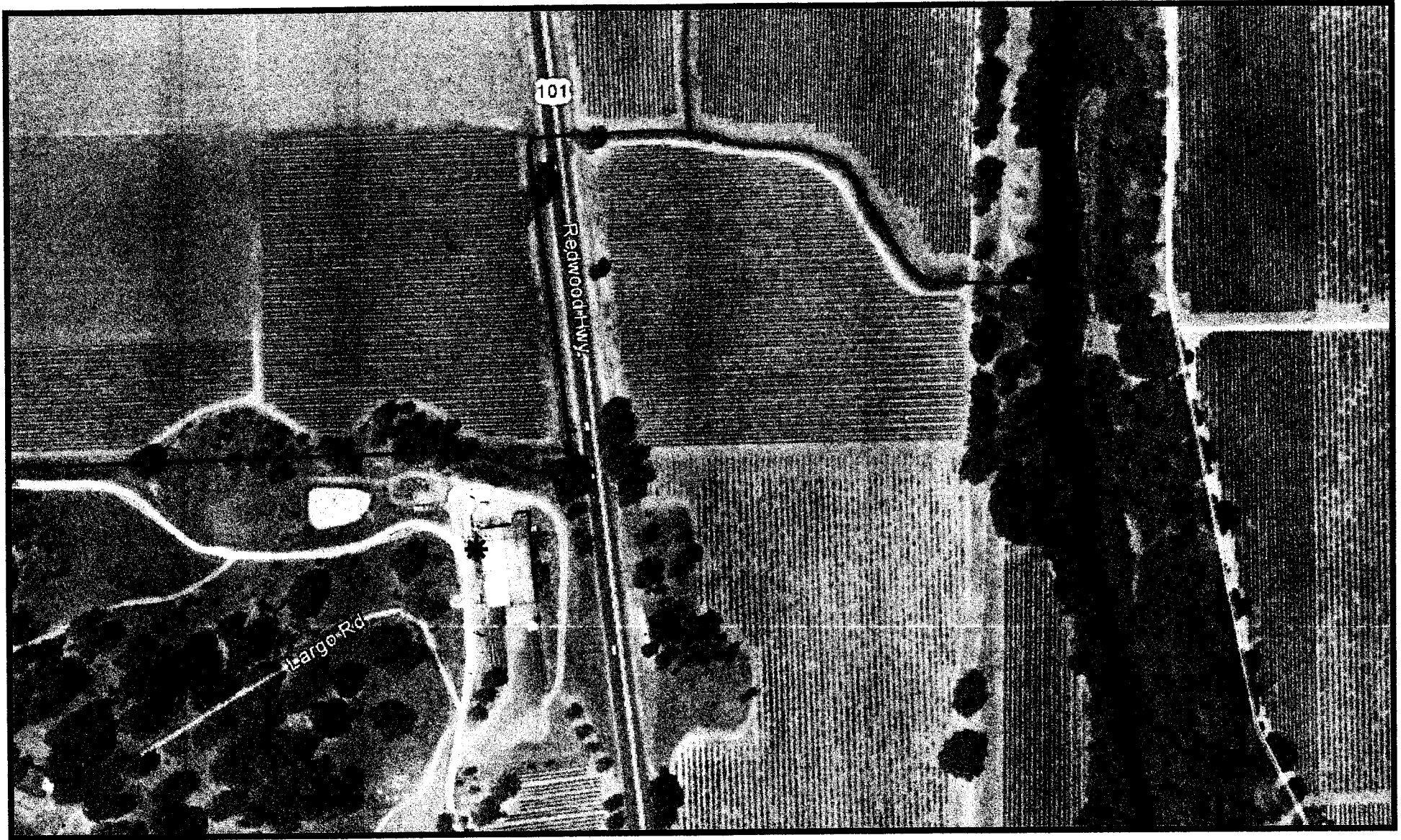
-  - Building
-  - Paved Area
-  - Covered Area

-  - Unpaved Area
-  - Retention Pond
-  - Agricultural Area

-  - Wall/Curb
-  - Fencing
-  - Graveled Area



Jaxon Keys Winery - Vicinity Diagram
10400 South Highway 101, Hopland, CA 95449



- * - Facility Location
- - Russian River
- - Creek

